Galloway School Lines, Inc. *and* Local 76, Service Employees International Union, AFL–CIO. Cases 1–CA–26744 and 1–RC–19303

July 28, 1992

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On October 23, 1991, Administrative Law Judge Robert T. Wallace issued the attached decision. The Charging Party filed exceptions and a supporting brief and a motion to correct its name, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt his recommended Order and Certification of Results of Election.[2]

[1] In adopting the judge's conclusions, we note that even assuming arguendo that the Respondent's critical period statements made at its Foster facility were to be found to be unlawful, we would find them insufficient to warrant setting aside the election held among the Chariho drivers. The record does not establish that they were disseminated to any more than two eligible voters. Thus the possibility of the conduct in question having had an effect on the election results is too remote to warrant setting aside the election. See *Metz Metallurgical Corp*., 270 NLRB 889 (1984).

Member Raudabaugh does not agree with the foregoing rationale. He relies solely on the fact that the statements were lawful. If the statements had been unlawful, they would constitute grounds for overturning the election unless ''it is virtually impossible to conclude that they would have affected the results of the election.'' See *Super Thrift*, 233 NLRB 409 (1977). Because the statements in this case were lawful, Member Raudabaugh finds it unnecessary to decide whether the case falls within the narrow exception of *Super Thrift.*

Member Raudabaugh also notes that Respondent's counsel, in a speech to employees, misrepresented Board procedures in certain respects. Counsel said that a ''test of certification'' case is heard by an administrative law judge. Counsel also said that the appeal from the Board decision in such a case goes to a Federal district court, suggesting that the case goes to a circuit court only after appeal from the district court. Of course, the fact is that ''test of certification'' cases usually go directly to the Board by way of Motion for Summary Judgment, and the Board's decision is appealed to the appropriate circuit court of appeals. Thus, counsel misstated procedural law in two respects. Significantly, the misstatements made it appear that a ''test of certification'' case takes longer to process than it actually does. Although these misstatements made to nonunit employees about 10 days before the election are not grounds for setting aside the election, Member Raudabaugh nonetheless expresses his concern that such misstatements were made by a member of the Bar. Either counsel was ignorant of basic principles or he deliberately misrepresented procedural law.

[2] In the motion to correct its name, the Union claims that in August 1990, it merged with another union. In view of the disposition of this case, as well as the absence of any basis for deciding whether there was continuity following the merger, we decline to grant the Union's motion.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Local 76, Service Employees International Union, AFL–CIO and it is not the exclusive representative of bargaining unit employees.

Thomas J. Morrison, Esq. and *Pat McAndrew Esq.*, for the General Counsel.

Thomas J. McAndrew, Esq., for the Respondent.

Burton E. Rosenthal, Esq. (Seqal, Roitman & Coleman), of Boston, Massachusetts, and *Jordan Ash*, organizer for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge. This case was tried in Providence, Rhode Island, on June 4 through 8, 1990, on a complaint issued on December 26, 1989,[1] based on a charge filed October 13 and amended on December 8. The consolidated representation case arose from a petition filed by the Union and a stipulated election held on October 6, which the Union lost 44 to 32 with the 6 challenged ballots being insufficient to affect the results in the Chariho school district unit of drivers, aides, and monitors. The Union filed timely objections which track the complaint allegations and therefore the objections were consolidated with the unfair labor practice matter.

The case questions are whether Respondent through statements made by its President Donald Galloway violated Section 8(a)(1) of the Act and whether actions taken or refusals to use Donald DelBene or Jean Browning as ''spare'' employees violated Section 8(a)(3) and (1) as to them and Jeanette Hanson. As set out below, I find that the Act was not violated and will recommend that the complaint and charges be dismissed and the objections overruled.

On the entire record including my observation of the demeanor of the witnesses and after consideration of the briefs filed by all parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Galloway School Lines, Inc. is a corporation engaged in the business of supplying schoolbus services to municipalities and other entities in Rhode Island, having offices and places of business in Chariho, Foster, and other Rhode Island locations. The Company's gross revenues for such services are well in excess of $250,000 and it annually receives goods and materials valued in excess of $50,000 directly from out-

[1] All dates herein are 1989 unless specifically stated otherwise.

side the State. The Company admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Company's principal operation is at the Chariho location where its main offices are located. Galloway has had the contract with the Chariho school district for over 13 years, taking over from a previous contractor. Under President Donald Galloway is General Manager Stephen DeSouza who served in that capacity with the previous company. Keith Galloway who has worked for the Company off and on for 6 years is in charge of maintenance, inventory, payroll, billing, and safety, and is the EPA coordinator for all the Company's locations.

Each of the four locations has an area manager and Doris DeSouza held that position for the previous 2 years at Chariho, having been a busdriver before that. Perry Delany is her assistant.

From the evidence it is clear there is no interchange of personnel between the four locations and each area operates in an autonomous way. Buses are supposed to remain within the geographical limits of the school district and it was okay with special permission that drivers who lived outside the district could take their buses home.

In the Chariho district the schools were on double sessions for at least 9 years through the 1988–1989 school year. Drivers normally had seven runs a day for the elementary (grades 1–4), middle school (grades 5–8), high school (grades 9–12) and kindergarten runs and, because they were closely spaced, the drivers were paid layover time, not having sufficient time to go home between runs.

The school district began building a new middle school during 1988–1989, to be completed for the 1989–1990 school year and it was adjacent to the high school. During the spring of 1989 the Company submitted bids for 1989–1990 on two bases. One was to have separate runs for the separate schools and the second bid was based on combining the middle school and high school runs. This latter system would mean less runs, reduce the costs to the school district, and provide less revenue to the Company and reduced income to the employees.

A number of the employees had children in school and were opposed to the combined runs on the basis that they felt the younger middle school children should not be bused with the high school pupils. The employees were also faced with earning less.

Several of the employees appeared at an open school board meeting in the spring and vigorously opposed the combined runs. One or more union officials were at that meeting and offered what help they could give to Sheila Wetherbee and others. The more vocal opponents felt that withholding their services might impress the school board and a 2-day strike of 20 or more employees took place.

Donald Calloway discussed the proposed strike action with the employees prior to the action and tried to dissuade them. He was able to cover the runs during the strike and no recriminations of any sort occurred.

Before the end of the school year, the Company, following its normal practice, sent each employee forms asking if they intended to return the following year, whether they were available for summer employment, and if they wanted to change their runs. It is clear that runs were awarded on the basis of seniority when they were open. It was expected that the employees would return signed forms before the end of the school year.

If employees had sufficient unemployment credits and made themselves available for work during the summer they were eligible for unemployment benefits over the summer school vacation. Employees such as alleged discriminatee Hanson who did not want any summer employment and so told the Company were not eligible and did not file for unemployment benefits.

Sheila Wetherbee and several other employees felt that the Union might be able to help them. The Union was contacted and at an organizing meeting it was decided to hold an open meeting at a legion hall and invite all the Chariho employees.

Wetherbee invited Laura Czerkiewicz who was known to favor the Company and she was told she could voice her opinions. Approximately 30 employees attended the July 11 meeting with two union officials, Wetherbee, and four other employees seated at the head table. Czerkiewicz sat up front near the table with a notebook and took some notes of the meeting. The three alleged discriminatees were at the meeting but were each near the back of the room.

Czerkiewicz did make some comments favorable to the Company noting their revenue and ability to pay and generally defending the Company. She testified she contradicted certain things said at the meeting and was interrupted by several people including Jean Browning. She stated she wrote down the names of those who were at the head table and made notes of some of the topics discussed.

A signup list was passed around and was later placed on the head table. Authorization cards were passed out and signed cards were collected or brought to the front table. Czerkiewicz said she received a card and left with it and did not observe any cards being handed in. Wetherbee called after her about the card and she said she would check it out and left.

Both Czerkiewicz and Doris DeSouza testified that Czerkiewicz told DeSouza she had gone to the publicized July 11 union meeting, had gotten into an argument with Wetherbee, and gotten chased out of the meeting. Both laughed about it and Czerkiewicz said Carol West had stated at the meeting that there were problems with management. DeSouza asked West about it and it was clarified that no accusation was being made.

Both DeSouza and Czerkiewicz denied that anything more was said about the meeting or that any participants in the meeting were identified. General Counsel states they are incredible but gives no plausible explanation for his assertion.

General Counsel states in his brief that Czerkiewicz was shut off at the union meeting from speaking, was angry about it, and informed Doris DeSouza of all the facts and personalities of the meeting and that such is the only conclusion which can be reached. On this basis and the distribution of the union ''Bill of Rights'' which was published in the local newspaper and the Union's October 2, leaflet on combined runs, and perhaps the signup sheet at the first meeting

and the list of organizing committee members which was available at subsequent union meetings, General Counsel predicates that Respondent had knowledge of the prounion sentiments of DelBene, Browning, and Hanson.

The problem with this premise is the denials of DeSouza and Czerkiewicz and no affirmative proof that such occurred; the fact that none of the three are named as supporters of the Bill of Rights; only Hanson and Browning were on the organizing committee and there is no showing that such a list was available at any time to Respondent or that the initial signup sheet was ever so available.

Hanson is pictured in the October 2 union circular as supporting the Union with some other employees but Browning and DelBene are not and the allegations concerning them occurred prior to that date.

The General Counsel bases his inferences of company knowledge of union activity of the alleged discriminatees on the above and on his conclusion that the actions taken against the three individuals are unexplainable except as retaliation for their union activities. While it is true that the three engaged in some union activities, they ranged from minimal for DelBene to routine for Browning and Hanson.

There is no probative evidence that Respondent's management officials were aware of any union activity of DelBene and Browning prior to their termination of their regular runs, and it is only supposition that Respondent saw the Union's October 2 pamphlet which has Hanson as one of the eight employees supporting the Union.

The actions taken against the individuals have rational explanations which will be shown, further rebutting the General Counsel's suppositions.

B. *Conversation of Don Galloway and Sheila Wetherbee*

Wetherbee testified that after the first union meeting it was decided to call Don Galloway and tell him that the employees were organizing and she was chosen to do that. She called and asked to see him and he asked if it was on a personal basis or as a union representative to the Company. She responded that she wanted to discuss the activity of the Union. Galloway said she might be trying to trick him and would not meet her because to do so would be to recognize her as the bargaining agent for a union he did not recognize and would not ever recognize in the Chariho district. He said if she had any other questions to contact his lawyer and gave her his name and phone number.

Calloway specifically denied saying he would not ever recognize the Union and testified he told Wetherbee he would meet with her as an employee but not as a union official since his attorney had warned him against any meeting that might lead to recognition unless they went through the NLRB procedure. He said he advised her to talk to his attorney and testified there was no union to recognize since they had to have an election for recognition.

Wetherbee was as certain that Galloway said he would not recognize the Union and did not mention an NLRB election and Galloway was equally certain that he did not make such a statement.

Though both witnesses appeared credible, it is clear that there was a misunderstanding. In the light of Galloway's receiving advice from his attorney and the manner in which the Company's campaign was conducted, it seems completely out of context for Galloway to have made such a statement. The Company wanted to avoid any recognition of the Union without an NLRB election and it appears the advice Calloway received was designed to avoid such an event and he sought to pass Wetherbee on to his attorney to handle the matter.

I conclude and find that Galloway did not state that he would not ever recognize the Union at Chariho nor did he inform the employees that it would be futile for them to select a union as their bargaining representative, as the complaint alleges. I will recommend dismissal of complaint allegations 7(a)(1).

C. *Donald DelBene*

Complaint allegations 8(a) and (b) assert that Respondent on September 2 gave information which caused the Rhode Island Department of Employment Security (RIDES) to prematurely cease payments to DelBene for the period of August 27 to September 6 and on September 6 refused him work as a ''spare'' employee.

DelBene started with the Company as a monitor in February, took a driving course, and started driving at the end of March and was given the bus 15 run in April. Although he was given the documents to complete concerning return in the fall and any requested change, he did not return them by the end of the school year, stating he thought he had the summer to complete them. He received unemployment compensation for the summer and was available for work.

About mid-August he was brought in to work out a kindergarten run and spoke to Perez Delaney. He asked about an Ashaway run and she asked if he had requested it on his papers and he said he had not filled them out. She told him to do so, that the runs were given by seniority. DelBene later completed the papers and returned them asking for an Ashaway run and if that was not available he would like the shortest run with the least number of children. He also said he did not want a kindergarten run.

DelBene testified that he told Delaney he might have a child care problem and she specifically denied that he ever mentioned such, and in fact said he would keep the bus 15 run if he couldn't get an Ashaway run.

On August 30 the Company held a meeting of all Chariho employees and gave out clipboards with the information on the assigned runs. DelBene's kindergarten run at his request had been given to another driver Jean Browning. After a short meeting Doris DeSouza drove a bus with the drivers to the new middle school to show where they would park their buses. They then returned to the company premises where DelBene told DeSouza he could not do the assignment because of a child care problem and returned the clipboard to her. He said he told DeSouza he wanted to be a spare driver and got no reply.

DelBene's explanation that he could not have left his son alone to do the Richmond (bus 15) run and wanted the Ashaway run near his home does not bear scrutiny. Under his explanation he would have had to leave his son home alone for a period of time lessened by only 30 to 45 minutes if he had gotten his desired run.

Doris DeSouza testified she was shocked and angered by DelBene's abrupt quitting of his regular run with him saying he could not do it because of a child care problem and would fill in if he could. She reported this to her husband, the gen-

eral manager, and said they were upset to have this happen at the beginning of school with no notice and it upset their assignments. DeSouza testified that the Ashaway run had diminished from six to five and those drivers all had seniority on DelBene. She also felt he knew of the child care problem far enough in advance that he did not need to wait until the last minute to quit his run.

Keith Galloway was notified of DelBene's refusal of the assignment and following the regular procedure filed the appropriate documents with RIDES. That organization decided that DelBene's refusal was for personal reasons, was unjustified, and he was denied benefits for the week ending September 1, 1989, the period specified in complaint paragraph 8(a).

DelBene appealed and the referee overturned the decision, which apparently reinstated DelBene's 1-week disqualification. The disqualification notice stated that the Company had terminated DelBene for refusing the recall to work. There was undenied testimony that the determination of disqualification is solely up to the State.

As noted previously and contrary to General Counsel's statement in the brief the Company did not alter normal procedure in notifying RIDES. To have unemployment over the summer it was necessary for the employee to be available for assignments. Here DelBene refused his regular employment and said he would be available as a spare.

A last-minute no-notice leaving of his job would understandably cause confusion and foster company resentment at a critical time such as the beginning of school. DelBene's asserted reason for the abrupt departure is not something he would not have known of long in advance and lessens his credibility and makes his reliability as an employee a nullity. The failure of Respondent to use DelBene as a ''spare'' is understandable given his treatment of the Company and its need to give spare work to regular and regular spare employees due to the lessened amounts of work available.

If company knowledge of DelBene's minimal union activity is assumed, and such a presumption seems gratuitous in this circumstance, the Company's determination not to further employ DelBene appears justified. If *Wright Line* (251 NLRB 1083 (1980)) is employed here, there is sufficient Respondent justification and complaint allegations 8(a) and (b) must be dismissed and I will so recommend.

D. *Jean Browning*

Jean Browning began as a monitor and became a driver in 1980 and worked steadily for Respondent. At the end of the school year she indicated on her papers that she would be back in the fall and was available for summer work.

In July Doris DeSouza attempted to reach her for a run and was told she was working at the new middle school on a 3–11 p.m. shift, and managed to telephone her there. Browning confirmed that she was working but said she didn't like her boss and might want to return to her driving job. DeSouza gave her a few days to make up her mind and Browning later got in touch and said she would be back in the fall. This latter conversation may have occurred late in July.

Browning showed up on August 30 and was given her regular run plus the kindergarten run DelBene did not want. On the second day of school after completing the morning run, Browning met Doris DeSouza in the office and said she could not work any more, she had a babysitter problem, her sister could not do it anymore. DeSouza gave her the name of her babysitter and mentioned several others but Browning said she would not be comfortable with someone unknown to her. DeSouza called in a ''spare'' (Marion Morgan) who wanted regular work. Browning showed her that route the following day and left saving she would like to do evening and weekend spare work. DeSouza said she would check but testified that Browning knew such work was kept for regular drivers due to the lessened work they were getting. She admitted that Browning's name was on the spare list but said she did not use her, one of the reasons being the short notice before leaving the job.

The complaint alleges that Respondent refused to let Browning have a spare cover her afternoon runs around September 7, refused to let her work as a spare on September 12, and refused to rehire her on November 7.

Browning testified that around September 7 she told DeSouza she would like to keep the high school and kindergarten runs, apparently so she could keep her janitorial job at the school. DeSouza recalled that Browning said she would like to have two jobs.

The General Counsel urges that not letting Browning use a spare to regularly do all her afternoon runs was discriminatory since another employee did have a spare do her kindergarten runs. Respondent explained that the other employee had gotten permission from Galloway to run a bingo run once a week which brought in additional funds to the Company. This once a week run is not comparable to Browning wanting to subdivide her assigned run so that she could work on two different jobs. The General Counsel would have Respondent change its run assignment system here to meet the desires of one of its employees. There was no discrimination in Respondent's refusal to alter its operations. Susan Wetherbee approached DeSouza about have Browning sub for her and was told that Browning could not cover the run since she didn't work there anymore. She said she was also told that the Company wanted regular drivers as subs and that the Company would secure the sub.

DeSouza said she did not use Browning as a spare but denied it had anything to do with the Union, that she did not know Browning was in favor of the Union. She testified she was told by Don Galloway that the Company would not have Browning work there again because of her leaving with a 1-day notice.

Browning testified that in October she called DeSouza and said the grass was not greener on the other side and would like to come back and work if there were some runs available. She was told to call back after the combined runs were put into effect to see if anything was available. When she called back in November, she was told she would have to talk to Don Galloway who was away. She did not talk to him until the following January and he said that because of the complaint etc., he had been advised not to take her back.

Browning agreed that to leave the school job and return to driving would have meant a lessened amount of pay and a loss in benefits.

Again, there is a paucity of evidence that Respondent knew of Browning's interest in the Union. Although she says she had a union pin on her purse, she was working at the school and not as a driver during the summer. When she returned and worked 1-1/2 days and then left her job, DeSouza

was giving her the names of other babysitters and had given her a kindergarten run. Despite these attempts to retain her Browning left and kept the janitorial job, staying on the 3–11 shift until the following February when she was placed on the 7 to 3 p.m. shift.

The complaint allegations concerning Browning must all be dismissed.

Even assuming knowledge of her minimum union activities and that was not proven, the Company is under no obligation to subdivide its runs so that Browning could have two jobs. There was no discrimination in not making a special allowance for Browning since the Company's allowance of a 1-day a week for one-run substitution for Caulfield is nowhere comparable to what Browning wanted. Not using her as a spare thereafter following her leaving the job on extremely short notice is in the same vein as DelBene and the Company is under no obligation to further employ an unreliable person.

As to the alleged November 7 refusal to rehire, Browning's testimony does not support the allegations. She was not positive of the date and testified she was told she would have to speak to Don Galloway because he took care of the hiring and that he was away in Florida. She was told to call back right before Thanksgiving that he would be back for a few days and was going away again. Browning did not remember whether or not she called at that time but said she called again in January. By that time the complaint had issued and acting on his attorney's advice Galloway said that he would not consider hiring her.

The General Counsel did not demonstrate that at any time in November or thereafter that there was a bus run available so that she could be reemployed.

There is insufficient evidence to overturn Respondent's reasons for refusing to subdivide her runs, or to refuse to use her as a spare employee who has demonstrated unreliability. Complaint allegations 8(c), (d), and (e) must be dismissed.

E. *The Galloway-West Conversation*

Complaint paragraph 7(a)(ii) alleges that Galloway coerced employees by implying that a known union supporter had been denied a benefit for engaging in union activity. As the basis of this allegation Carol West testified that when she talked to Calloway she knew that Browning had a full-time job at the school and had quit her driver's job. She asked Galloway why Browning did not get the same permission as Caulfield did. She testified Galloway said Caulfield brought in a lot of money doing the bingo runs and was loyal and loyalty counted. West said she thought the company policies were not being followed.

Calloway testified that West asked if it was fair to have someone cover Caulfield's noon runs as against Browning and he answered that Caulfield was bringing in money for the Company and they sometimes bent the rules as they did for West in allowing her to take her bus home out of the district.

As noted above the distinction between Caulfield and Browning situation are obvious and not at all comparable. The word ''loyalty'' has various meanings and here could be equated with reliability rather than antiunionism as the General Counsel suggests. From the testimony there is no implication of denial of a benefit to a known union sympathizer. There is also a question of knowledge.

This 8(a)(1) allegation is not sustained by the testimony and must be dismissed.

F. *Jeanette Hanson*

Hanson started as a spare driver on March 8, and applied for and was given a regular run in Charleston in April, which consisted of only an elementary and a kindergarten run. She wanted a Richmond run as being convenient for her but wanted only part of the bus 15 route not wanting to have a senior high school trip. She also testified she had asked for bus runs 12 and 1 and had been told that others more senior had them.

At the beginning of the 1989–1990 school year she was assigned to bus 7 which had the same Charleston run she had the previous year. About a week into the school year the driver of bus 1 asked if she would switch because she did not like the Richmond run and knew that Hanson wanted Richmond runs. Hanson agreed and the other driver got permission from Doris DeSouza for the switch.

Marion Morgan who had worked for the Company in another school district came back to the Chariho district in September and on the second schoolday was called by Doris DeSouza to take over Browning's bus 12. She was told this was temporary until the changes were made with the combined runs. She asked Doris DeSouza if she could change to bus 13, since that route was in her neighborhood and she knew the children. She stated she was against the Union and wore a vote no button.

Both Hanson and Morgan deny that they had discussed a switch of bus routes.

Doris DeSouza testified that Morgan told her that she and Hanson had discussed the switch and that it would be better for both of them. She said that Hanson later asked her if Morgan had mentioned the switch to her and she then took it up with her husband and he approved. The two were told to show each other their routes and Delaney reported to her that they did fine. She added that the new route was closer to Hanson's home.

Hanson testified that in late October, Doris DeSouza asked her to come to the office after her elementary school run which she did. DeSouza said Marion Morgan wanted to switch routes and she had agreed with the combined runs starting in a week and to show each other their routes. They showed each other the elementary school routes since the middle school routes were the same. After getting home she decided she didn't like the way this was done and did not want to work for a company that switched routes because someone asked for it. She called Doris DeSouza and said that Friday would be her last day, that she was leaving for family reasons. At no time did she complain to anyone with the Company about the switch of the bus routes, nor after quitting ever ask for reinstatement.

Complaint paragraph 8(f) alleges that Respondent violated the Act by switching her from her regular route around November 1. Although there is no direct evidence of company knowledge of union adherence by Hanson, her picture and sentiments were in the October 2 union flyer put out just before the election. It may be assumed that it was seen by Respondent.

Since Hanson had sought part of route 15 or either route 12 or 13 and since Respondent knew that and Morgan who had been with the Company a year and a half would be bet-

ter served with a run in her own neighborhood, there would seem to be no problem with switching routes. Hanson made no protest whatsoever about the change, even when quitting.

It is only the General Counsel's presumption that the switch of routes was discriminatory. There is no proof that anyone except Hanson thought there was something wrong with the action and she never made her thoughts known to the Company. How then can it be said that the action was discriminatory?

There is conflict in the reasons given by the witnesses as to whether Hanson and Morgan discussed the switch before it was made. But there being no showing that the switch of routes was discriminatory there is no need to resolve that dispute.

I conclude and find that the action asserted in complaint paragraph 8(f) was not in violation of the Act and must be dismissed.

G. *The Foster Meeting*

Respondent held a meeting for its Foster division employees on September 26, before the election for the Chariho employees. The General Counsel alleges that during the meeting employees were threatened with unspecified reprisals, impliedly threatened with the loss of the benefit of being able to drive their nurses home and with discharge or other retaliation because they engaged in union activity. The Charging Party alleges that this was asserted 8(a)(1) activity in addition to the other allegations discussed above destroyed the necessary laboratory conditions of the election and that the election must be set aside and a new one ordered.

Charging Party states that the employees of the division are interchanged and that a secretly made tape of the meeting which was later heard by a Chariho employee warrants the invalidation of the election. Wetherbee's testimony about other division employees working at Chariho is not specific and given the weight of testimony that the districts are kept separate, I cannot find that there is a practice of interchange of employees.

Foster employee Linda Fournier wore a union T-shirt and button at Foster and made the tape, which, with a transcription were received in evidence. She lives 3 miles outside the Foster district and was allowed to take her bus home. According to her testimony about the meeting Don Calloway said if there was a division and if anyone was causing problems, that heads were going to roll. Attorney McAndrew, according to Fournier talked about the alleged unfair labor practices at Laidlaw in Conventry, Rhode Island, which was nearby and said that Galloway was not going to fight the Union as Laidlaw had done. Asked about the legal implications of Laidlaw's actions, McAndrew stated it was legal for the Company to refuse to recognize the Union until ordered to do so by the Federal appeals court. Fournier stated that the employees were told that taking buses home was a privilege and that Calloway asked why she did not go back to Coventry to work and have her union representation.

Reading the 14 single-space typewritten pages of the meeting generally backs up Fournier's recollection with the exception that the ''heads roll'' statement is specifically tied to the issue of safety, and not to unionism. The basic tone of the meeting was that Laidlaw and other large companies were fighting unions and trying to drive small companies like Galloway out of business and that Galloway did not want a union but was not going to fight one. The colloquy between Fournier and Galloway did not contain specific threats and a reading of the transcript shows that no threats were implied.

I conclude and find that there were no 8(a)(1) violations in the September 26 Foster meeting and will recommend the dismissal of the allegations of complaint paragraphs 7(a)(iii)(A), (B), and (C).

H. *Summation of Findings*

In summary, I have found that Respondent has not committed any of the violations alleged in the complaint and will accordingly recommend that the complaint be dismissed in its entirety. Based on that recommendation, I further recommend that the objections to the election be overruled and the results of the election be certified.[2]

CONCLUSION OF LAW

Having found that Respondent has not violated the Act as set forth above I conclude that the law has not been violated and recommend that the complaint be dismissed and the objections to the election be overruled.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The complaint is dismissed.

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[2] I have carefully read and considered each of the cases cited by General Counsel and the Charging Party and do not consider any of them to have true application to the facts of this case. The situations in all of the cited cases were substantively different and inapplicable here.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.